that where this relationship is domesticated the rights and liabilities under workmen's compensation attach.[16] A court adopting this point of view may, in every case, reach a just result, regardless of its local law concerning the obligation of contracts.

The recent tendency in legislation has been to recognize that workmen's compensation is essentially in the nature of industrial insurance, by providing for a fund owned or controlled by the state.[17] Under statutes of this character it is highly probable that the state intends that the premiums paid by those carrying on industries within the state should be used to pay those workmen only who are engaged in such industries. It is submitted that the trend is in favor of employing workmen's compensation as a means of regulating local industry, and that the courts will ultimately adopt this point of view.

ACQUISITION OF DOMICIL IN FOREIGN COUNTRIES.—Many important questions are solved with reference to the legal status of the person or persons whose rights or liabilities are the subject of controversy. Thus the right of an individual to make a will[1] disposing of personally, the validity of a particular marriage,[2] jurisdiction sufficient to grant a divorce[3] will depend on the legal relationship between one or more persons and a particular jurisdiction. It was generally agreed up to within the last one hundred years that one who was domiciled in a particular locality should be governed by[4] the laws of that locality in respect to such matters as those mentioned above. Domicil was defined as residence within the locality with the intention permanently to remain there.[5] More recently, however, many European nations have either discarded domicil as the test of the existence of a legal relationship sufficient to determine civil status and substituted therefor the criterion of nationality,[6] or have required, as has been thought, that some further step beyond permanent residence be taken in order that this relationship should exist.[7] The common law, on the other

[16]In Kenny *v.* Union Ry. (1915) 166 App. Div. 497, 152 N. Y. Supp. 117, at p. 500, the court said: "While the relation of employer and employee as defined by the statute must have existed at the time deceased sustained the injury, it matters not whether the employment was under a contract concededly valid as to both parties, or under a contract voidable at the election of the employer, or whether the liability of the employer for wages was fixed, or determinable under *quantum meruit*. The vital question is whether the relation of employer and employee existed between the deceased and the railway company, and the facts being conceded, the question is one of law."

[17]Connor, *op. cit.* § 29.

[1]Goods of Maraver (1828) 1 Hagg. Ecc. 498; Mayor of Canterbury *v.* Wyburn [1895] A. C. 89.

[2]Sottomayer *v.* De Barros (1877) 3 Prob. D. 1; *cf.* Harral *v.* Harral (1884) 39 N. J. Eq. 279.

[3]Le Mesurier *v.* Le Mesurier [1895] A. C. 517; Hunt *v.* Hunt (1878) 72 N. Y. 217.

[4]Westlake, Private International Law (5th ed.) Chapters I-II, contains an historical résumé of the conflicting theories of legal status.

[5]For various definitions of domicil see Dicey, Conflict of Laws (2nd ed.) App. Note 6.

[6]Westlake, *loc. cit.*

[7]See Collier *v.* Rivaz (1841) 2 Curt. Ecc. 855; but see Bremer *v.* Freeman (1857) 10 Moore P. C. 306, 363; Dupuy *v.* Wurtz (1873) 53 N. Y. 556; Harral *v.* Harral, *supra.*

hand, has clung to the test of domicil. As long as the particular case involves only countries in which the principles of the common law apply, no unsurmountable difficulties are encountered. Since all common law jurisdictions apply the test of residence coupled with intention permanently to remain there in fixing civil status there is no need of examining the foreign law in order to determine the domicil. But where a will is made, a marriage celebrated, or a divorce granted in a jurisdiction where domicil in the common law sense is not recognized, it may well be that according to the law of the forum the case ought to be governed by the foreign law of wills, etc., while according to the law of the foreign state an entirely different result would be reached. In this situation several courses are open to the court of the forum. It may apply the foreign law of wills, etc., as the *lex domicilii* without regard to the attitude of the courts of the other jurisdiction,[8] it may adopt the theory commonly known as the *renvoi,* whereby the conflicts law of the other country is applied;[9] or it may declare that a domicil was never acquired in that locality as a matter of law because the propositus never possessed the legal rights which normally flow from a common law domicil.[10]

The courts of any particular jurisdiction have the right and duty of determining whether a certain individual is or is not bound by its internal law, although the international recognition of its decision will depend on the policy of the various foreign tribunals.[11] But this right and duty does not extend, it is submitted, to a determination solely with reference to its own laws of the question whether or not the propositus is bound by the laws of another state.[12] It would seem unsound, therefore, for a common law court to apply the common law doctrine of domicil so rigorously that if the individual is domiciled in a foreign country within the common law meaning of the term domicil, the foreign law of wills, etc., must be applied. And yet does not a determination of domicil by a purely factual criterion logically demand such a result?

In the majority of the reported cases, however, the courts have wisely refused to press the common law doctrine of domicil to this extreme, and have by the so-called doctrine of *renvoi* applied some other law than that of the permanent residence. The *renvoi* presupposes that a legal tie between the individual and the law of the

[8]Hamilton *v.* Dallas (1875) 1 Ch. D. 257 (*semble*).

[9]See articles by Ernest G. Lorenzen, 10 Columbia Law Rev. 190, 339, and Ernst O. Schreiber, 31 Harvard Law Rev. 523.

[10]See footnote 18, *infra.*

[11]The public policy of jurisdictions following the common law might, therefore, prevent the recognition of a legal tie asserted by a foreign country which is based on mere physical presence or nationality. But it is another matter to say that where permanent residence exists the foreign country must recognize the legal tie. And it is absurd to declare that this legal tie gives rise to no substantive rights or liabilities, but points out the particular conflicts rule applicable to the case. This, it would seem, is an inherent vice in the doctrine of *renvoi.*

[12]"A défaut d'une souveraineté supérieure qui impose sur souverainetés concurrentes les limites de leur autorité respective, il ne peut évidemment appartenir quo' à l'Etat de tracer lui-même les limites de sa souveraineté et de la souveraineté d'autrui sur son territoire. Il serait absurde de supposer que l'Etat français a pu abandoner a l'Angleterre ou a l'Allemagne le soin de lui indiquer jusqu'où va sa propre souveraineté, et c'est cependant ce qu' admet la théorie du renvoi." Pillet, Droit International Prive 165.

foreign state exists, but that the law of the foreign state is its entire jurisprudence and not merely its ordinary substantive law.[13] Hence, it is said, the court of the forum may apply the foreign rules of conflicts of laws and apply the substantive law which these rules show to be appropriate.[14] The doctrine of *renvoi* has been discussed *pro* and *con,* but it is unnecessary in this place to re-examine it anew, since the courts have applied it not because of its intrinsic merits but by reason of the results reached through its use.

A brief examination of a few important decisions will perhaps make the matter clearer. In *Collier* v. *Rivaz,*[15] the testator had an Irish domicil of origin which was subsequently abandoned in favor of an English domicil of choice. At the time of his death he was *de facto* domiciled in Belgium. His will was in the English form, and an examination of Belgian law convinced the English court that one who, like the testator, had not received authorization from the proper Belgian authorities could not make a will in Belgian form. It was held that its validity must be determined by the English law. Some years later, a similar state of facts arose as to a *de facto* domicil in France in *Bremer* v. *Freeman.*[16] In this case the court was of the opinion that authorization was not required in France and held that a will in the English form made by an Englishwoman permanently residing in France was invalid. The difference in the results reached is most obviously and satisfactorily explained by the different conclusions of the courts as to the law of the foreign jurisdictions governing the classes of persons who were entitled to make a will in the form prescribed by their own laws. Finally in the leading case of *In re Johnson,*[17] the court suggested as alternative grounds for its decision the conception of legality under the law of the place where domicil is claimed as a necessary element of domicil,[18] and the doctrine of *renvoi.* The intestate had a domicil of origin in the British colony of Malta. She left Malta and resided permanently in

[13] If the foreign state also applies the doctrine of *renvoi,* there arises a possible *circulus inextricabilis.* Pillet, *op. cit.* 168. Therefore, the reference to the foreign law must be to its conflicts law exclusive of the doctrine of *renvoi.* Westlake, *op. cit.* 31, *et seq.*

[14] See articles cited in footnote 9, *supra,* for references to the literature of the subject.

[15] *Supra,* footnote 7.

[16] *Supra,* footnote 7.

[17] [1903] 1 Ch. 821. Followed in *In re* Bowes (1906) 22 T. L. R. 711.

[18] "When the Court has ascertained that the domicil of origin has been displaced by the domicil of choice, distribution of movables follows the domicil of choice; but in order to establish a new domicil of choice the Court has to be satisfied that it has been adopted *animo et facto*—it is essential that there should be both animus and factum. When, therefore, the law of the land said to be chosen as the new domicil disregards domicil and declines to distribute in accordance therewith or to treat it as of any force, there cannot have been any change of domicil de facto; and the case is accordingly remitted to this Court as a case where the propositus has intended but has failed to obtain an effectual domicil of choice. No change is effectual unless the factum is proved, and the factum cannot exist in a country where the law refuses to recognize it. The result is that this Court must conclude that a domicil of choice, ineffectual to create any rights and liabilities governing the distribution of movables in the country supposed to have been chosen, is for this purpose no domicil at all, and that the propositus therefore is left with his domicil of origin unaffected." *Per* Farwell, J., at pp. 827-828.

Baden for some fifty years. According to the court's opinion as to the law of Baden the property of non-nationals was to be distributed according to the nationality of the decedent, which in this case was English. The court distributed the property in accordance with the law of Malta. From the point of view of *renvoi* the case might be criticized on the ground that English and not Maltese law should have been applied.[19] But, if the other ground suggested by the court is sound, the result reached is correct. The law of the domicile of origin must be applied since the original domicile was not displaced by any legally effective change.[20]

In the recent case of *Casdagli* v. *Casdagli* (1918) 34 T. L. R. 195, which involved the question of the domicile of a privileged foreigner permanently residing in Turkish territory, the necessity of introducing some idea of legality under foreign law in the definition of domicil was clearly shown. An Englishman had permanently settled in Egypt and married there. While temporarily in England his wife brought an action for divorce in an English court. The husband filed a plea to the jurisdiction of the court on the ground that the matrimonial domicil was in Egypt. Under the treaty between Great Britain and Turkey in force at the time suit was brought, British subjects were not subject to the jurisdiction of the Turkish courts but were to sue and be sued in the British Consular Courts. These courts, however, had no matrimonial jurisdiction. The plea was overruled[21] and on appeal this decision was affirmed by a divided court. The basis of the majority opinion was that, since the source of law governing privileged persons living in foreign countries which grant rights of extra-territoriality is the state to whose subjects these rights are granted, the defendant could not have obtained a Turkish or Egyptian domicil. Scrutton, L. J., contended that the source of law in such cases was the territorial sovereign; who permitted the officers of the other nations to enforce as his agents the national law of the privileged foreigner. Hence, he concluded, the defendant did acquire a foreign domicil and the domestic tribunal had no jurisdiction to grant the wife a divorce. Assuming that his view as to the true nature of extra-territoriality is correct,[22] it would seem, nevertheless, that the situation in the present case involved more than mere extra-territoriality. There was as to matrimonial causes involving Englishmen an entire absence of Turkish law or Turkish jurisdiction. Therefore he might well have declared, on the reasoning of *In re Johnson, supra,* that for the purpose of determining their marital status the parties in the present case could not have obtained a domicil in Egypt.[23]

[19] See Baty, Polarized Law 118, *et seq.*

[20] If a domicil of choice is abandoned without a new domicil of choice being acquired, the domicil of origin revives. Udny *v.* Udny (1869) 1 H. L. Sc. 441. The American rule is apparently *contra.* Wharton, Conflict of Laws (3rd ed.) §§ 59, 60; but see Story, Conflict of Laws (8th ed.) 54n. (*c*).

[21] Casdagli *v.* Casdagli (1916) 34 T. L. R. 96.

[22] The nature of extra-territoriality is a matter of dispute among the courts and the text writers. The view of the majority judges in the principal case is supported by *In re* Tootal's Trusts (1883) 23 Ch. D. 532; Abdul-Messih *v.* Chukra Farra (1888) 13 App. Cas. 431. These decisions are criticized in Westlake, *op. cit.* 344. Mather *v.* Cunningham (1909) 105 Me. 326, 74 Atl. 809, and *In re* Young John Allen (1907) 1 Am. J. Int. Law 1029, are *contra.* See also articles by Charles H. Huberich in 24 Law Q. Rev. 245, 31 Law Q. Rev. 447.

[23] See footnote 18, *supra.*

Since the question involved in *Casdagli* v. *Casdagli* was jurisdictional, and not one calling for the application of foreign law, the doctrine of *renvoi* would not have enabled the court to solve it. But the principle which it lays down is, it is submitted, equally applicable to the *renvoi* cases, and explains the results reached in such cases in a more realistic and logical manner than that employed by the jurists advocating *renvoi*.

CONVICTION OF AN ACCESSORY AFTER ACQUITTAL OF THE PRINCIPAL.—At common law it was said that the accessory "followed his principal like a shadow",[1]—without a principal there could be no accessory.[2] No accessory could be tried and convicted unless the principal felon had been previously either convicted or outlawed, and evidence thereof given to the jury, or unless the principal be charged in the same indictment with the accessory and tried at the same time, in which latter case the jury must inquire first into the guilt of the principal, and if they found him not guilty, then acquit the accessory; but if they found him guilty, they must then inquire into the guilt of the accessory.[3] To this there was but one exception,—where the accessory consented to be tried before the principal. Even then proof of the guilt of the principal was indispensable, and upon the conviction of the accessory, judgment against him had to be suspended until the principal had been prosecuted and found guilty. But if the accessory were acquitted of the charge, the acquittal was good and the accessory discharged.[4] It followed, therefore, that anything which prevented the conviction[5] of the principal, such as his death,[6] or standing mute,[7] or being admitted to the benefit of clergy,[8] or a pardon before conviction,[9] prevented the trial of the accessory. The record of the acquittal of the principal was consequently an absolute bar to the prosecution of the accessory.[10] Since, however, there was an added

[1]Bishop, New Criminal Law (8th ed.) § 666.

[2]Commonwealth *v.* Phillips (1820) 16 Mass. *423.

[3]1 Hale, Pleas of the Crown 624; see State *v.* Duncan (1845) 28 N. C. 98; United States *v.* Hartwell (1869) 26 Fed. Cas. No. 15318; *Ex parte* Bowen (1889) 25 Fla. 214, 6 So. 65.

[4]1 Hale, *op cit.* 623; see Commonwealth *v.* Andrews (1807) 3 Mass. 126; State *v.* Chittem (1828) 13 N. C. 49; *Ex parte* Bowen, *supra.*

[5]At common law a judgment of conviction of the principal felon, and not merely the verdict of a jury as to his guilt, was prerequisite. State *v.* Duncan, *supra*; Daughtrey *v.* State (1903) 46 Fla. 109, 35 So. 397.

[6]Commonwealth *v.* Phillips, *supra*; see Moore *v.* State (1899) 40 Tex. Cr. 389, 51 S. W. 1108; but *cf.* Self *v.* State (1873) 65 Tenn. 244.

[7]See Rex *v.* Burridge (1735) 3 P. Wms. *439, *485; State *v.* Duncan, *supra.*

[8]*Supra,* footnote 7.

[9]*Supra,* footnote 7. But not a pardon after conviction. Commonwealth *v.* House (1899) 10 Pa. Super. Ct. 259. Where a judgment of conviction against a principal was reversed, the accessory was *ipso facto* discharged. Ray *v.* State (1882) 13 Neb. 55, 13 N. W. 2.

[10]McCarty *v.* State (1873) 44 Ind. 214; see *Ex parte* Bowen, *supra*; State *v.* Jones (1888) 101 N. C. 719, 8 S. E. 147; *cf.* United States *v.* Crane (1847) 25 Fed. Cas., No. 14888; but *cf.* Regina *v.* Pulham (1840) 9 C. & P. 280.